IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 570 OF 1995

Mahesh Ramchadnra Thorat)
since deceased by his heirs and)
legal representatives namely:)
1) Akhinandan Mahesh Thorat)
2) Sangram Mahesh Thorat)
Both minors by their guardian)
mother Smt. Sunanda Mahesh)
Thorat residing at Shirwade,)
Taluka : Karad, Dist.Satara.)
3) Sandeep Ramchandra Thorat)
Lunatic by his guardian -)
mother Smt. Subhadrabai)
Ramchandra Thorat, residing)
at Shirwade, Taluka : Karad,).. Appellants.
District : Satara. ...)..(Orig.Plaintiffs)

Versus

1) The State of Maharashtra)
through the Collector of)
Satara. ... ...)

2) Shri Baburao Govind Jagadale)
age 70, Trsutee Maruti Deo,)
Shirawade, Taluka : Karad,).. Respondents.
District : Satara.)..(Orig.Defendants)

-: ALONG WITH :-

SECOND APPEAL NO. 571 OF 1995

Shri Baburao Narayan Jagadale)
Occupation : Agriculture,)
residing at Shirwade, Taluka:).. Appellant.
Karad, District : Satara.)..(Orig.Plaintiff)

Versus

1) The State of Maharashtra)
through the Collector of)
Satara. ... ...)
2) Shri Baburao Govind Jagadale)
Trsutee Maruti Deo Trust,)
Shirawade, Taluka : Karad,).. Respondents.
District : Satara.)..(Orig.Defendants)

-: ALONG WITH :-

SECOND APPEAL NO. 572 OF 1995

Anna Nana Jagadale,)
since deceased by his heirs)
and legal representatives namely)
A) Smt. Ahusabai Anna Jagadale)
78 years;)
B) Nana Anna Jagadale,)
Age 46 years;)
C) Mansing Anna Jagadale,)
since deceased by his legal)
representatives :)
(i) Suhas Mansing Jagadale)
age 17;)
(ii)Gorakhanath Mansing)
Jagadale, Age 16.)
by C.A.L. i.e. Appellant)
No.1A.)
D) Kantabai Tukaram Gaikwad,)
age 54, All resident of)
Shirwade, Taluka Karad,).. Appellants.
District : Satara.)..(Orig.Plaintiffs)

Versus

1) The State of Maharashtra)
through the Collector of)
Satara. ... ...)
2) Shri Baburao Govind Jagadale)
Trsutee Maruti Deo Trust,)
Shirawade, Taluka : Karad,).. Respondents.
District : Satara.)..(Orig.Defendants)

-: ALONG WITH :-

SECOND APPEAL NO. 593 OF 1995

1) Vithal Bhargav Jagadale)
since deceased by his heirs)
and legal representatives,)
namely :)
A) Smt.Malan Vithal Jagadale)
B) Miss.Sangita Vithal)
Jagadale)
C) Miss Manisha Vithal)
Jagadale)
D) Santosh Vithal Jagadale)

E) Balkrishna Vithal Jagadale)
F) Babitai Vithal Jagadale)
Nos.1B to 1F - minors by)
O. A. L. 1A.)
2) Nana Bhargave Jagadale)
3) Kisan Bhargav Jagadale)
4) Bhimrao Bhargav Jagadale)
5) Arjun Bhargav Jagadale)
Nos.2 to 5 all agriculturists)
All residing at Shirwade,)
Taluka Karad, Dist.Satara.)
6) Sou. Ranjana Prakash Chavan)
Occupation : Household and)
Agriculturist, residing at)
Sajur, Taluka : Karad,)
District : Satara.)
7) Sou. Mangal Shankar Jadhav)
residing at Umbraj, Taluka)
Karad, Dist. Satara.)
8) Smt. Tarabai Balkrishna Chavan)
age 27, Occupation Agricultu-)
rist, residing at Konegaon,).. Appellants.
Taluka Karad,Dist. Satara.)..(Orig.Plaintiffs)

Versus

1) The State of Maharashtra)

through the Collector of)
Satara. ... ...)
2) Shri Baburao Govind Jagadale)
Trsutee of Shri Rameshwar)
Mahadeo, R/o. Shirawade,)
Taluka : Karad,).. Respondents.
District : Satara.)..(Orig.Defendants)

-: ALONG WITH :-

SECOND APPEAL NO. 595 OF 1995

Ganpat Dhanaji Jagadale, Age :)
74, Occupation : Agriculturist,)
residing at Shirwade, Taluka:).. Appellant.
Karad, District : Satara.)..(Orig.Plaintiff)

Versus

1) The State of Maharashtra)
through the Collector of)
Satara. ... ...)
2) Shri Baburao Govind Jagadale)
Trsutee of Shri Rameshwar)
Mahadeo Trust,)
Shirawade, Taluka : Karad,).. Respondents.

District : Satara.)..(Orig.Defendants)

Mr. Vinod Jadhav for the Appellants.
Mr. A. R. Patil, AGP for Respondent No.1.
Mr. P. B. Shah for Respondent No.2.

CORAM : ANOOP V. MOHTA, J.

DATED : 8TH DECEMBER, 2005.

JUDGEMENT :

All these second appeals can be disposed of by common order as the appellate court i.e. The District Judge, Satara by his common order dated 9th December, 1994 dismissed the appeals filed by the original plaintiffs, whose suits for injunction were also dismissed by the Joint Civil Judge, Senior Division, Satara by his order dated 17th March, 1990.

2. Heard learned Counsel appearing for the parties. There is no dispute that the present suits were the suit for simplicitor injunction and not for any declaration and/or possession. After considering the rival contention raised by the parties as well as the materials placed on the record by the parties, the trial court held that suit itself was not tenable.

The plaintiffs were not in legal possession; the Plaintiffs failed to prove any obstruction to the rights as claimed; thereby dismissed the suits. The appellate court confirmed the trial court's finding and by adding the separate reasons the dismissal of the suit was maintained.

3. A suit against respondent No.1, the State of Maharashtra, admittedly filed without issuing any notice under section 80 of the Code of Civil Procedure. There was specific objection raised in the written statement. The court, therefore, was right in observing that the suits were not maintainable for want of notice under Section 80 of the Code of Civil Procedure.

4. Admittedly, the lands in question belong to respondent No.1, the State of Maharashtra. Admittedly, the plaintiffs are in possession as purchaser in auction. In this background itself there is no question of claiming any right over the property of Government on the foundation of tenancy as claimed in the present suit. Assuming for a moment that the plaintiffs are in possession of the property in question, still at this stage, as pointed out rightly

by the learned Counsel appearing for the respondent Trust, that the legal proceedings for evicting such persons have been initiated under the Maharashtra Land Revenue Code and it has attained its finality. Therefore, realising that the plaintiffs sought such injunction from the court.

5. The learned Counsel appearing for the appellants basically contended that they are in settled possession of the property in question since long and therefore irrespective of their relationship or their right to occupy the premises in question, their possession should be protected and they should not be evicted except under the due process of law.

6. The present suits for injunction, in this background, have been considered by both the courts taking into consideration all these aspects of legal possession as well as occupation of the plaintiffs on the lands in question. The respondents are entitled to recover possession of the property by following due process of law. As observed by the courts below, the plaintiffs failed to prove that the respondents are obstructing their possession. In this background, the concurrent findings given by the courts below in the

suits as filed based on the averments as made, rightly rejected the case of the plaintiffs and dismissed the suits.

7. Without going into any further controversy as well as the reasoning given by the appellate court based on the division bench judgment of this Court in the case of **Dattu Dnyanu Padalkar vs. Hari Natha Patil and Anr.** (AIR 1979 Bom. 247), as it supports the case of the respondents in so far as rights of tenancy of any sort in favour of the appellants, I am of the view, as undisputed position on the record that they are in possession of the property as auction purchaser, there is no question of creating any tenancy as contemplated under the Bombay Tenancy and Agriculture Lands Act. In this background, I see there is no perversity as such which can be borne out from the record and/or even pointed out by the advocate appearing for the appellants.

8. The additionally the of action for eviction under the Code has remained in tact and final. I see there is no reason now in any way to interfere with the concurrent finding given by the court.

9. In view of this, all these appeals are dismissed. Interim stay as granted by this court by an order dated 9th October, 1995 in the civil application filed in the respective second appeals also stands vacated. In the circumstances of the case, there shall be no order as to costs.

Sd/-

(ANOOP V. MOHTA, J.)